



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Fillmore Field Office

95 E 500 N

Fillmore, UT 84631

<http://www.blm.gov/ut/st/en/fo/fillmore.html>



RECEIVED

NOV 14 2014

IN REPLY REFER TO:  
3600 (UTW02000)  
UTU-79875

November 10, 2014

CERTIFIED MAIL # 7012 3460 0000 6633 2698  
RETURN RECEIPT REQUESTED

### DECISION

Dale Rogers	:	43 CFR 3600
P.O. Box 160	:	Surface Management Notice and Plan
Baker, NV 89311	:	

#### Notice of Noncompliance – Reclamation Required – Submit Change of Operator Form

You have previously stated by telephone that the operation at your previously proposed mineral materials sale, UTU-79875, has been sold to another operator. This pending Bureau of Land Management (BLM) mineral materials sale, at the Drumbeat Mine, is located in Township 14 South, Range 10 West; in the SW $\frac{1}{4}$  of section 27 and the SE $\frac{1}{4}$  of section 28; Salt Lake Meridian. The corresponding case file numbers for the Drumbeat Mine with the Utah Division of Oil, Gas, and Mining (UDOGM) are S/023/0089 and S/023/0090.

Change of Operator – The BLM has no official record of a change of operator for this site, and you are still listed as the responsible party by the BLM. Federal requirements for the transfer of a mineral materials sale contract are described in the United States Code of Federal Regulations (CFR) in 43 CFR §3602.24 and are discussed in greater detail below.

A letter from UDOGM to Bradley Jones, dated May 9, 2011, confirms a transfer of the State of Utah's UDOGM 'Small Mine' permit. However, no change of operator has been recorded for the corresponding Federal pending mineral materials sale at this location. You were originally notified of this situation in a letter from Jill Silvey, then Field Manager of the BLM Salt Lake Field Office, in a letter dated April 19, 2011. As stated in that letter and specified in Federal regulations, "You may not assign the contract or any interest therein unless BLM approves the transfer in writing."

Change of Operator Form Submission – The Change of Operator application must be submitted to the BLM before any transfer from one operator to another is approved. A BLM Change of Operator form is necessary to transfer reclamation responsibilities from one operator to another. You remain



responsible for mineral materials removed from the site, and reclamation of the surface disturbances, until the form is returned with both your signature and the signature of the successor operator. A copy of Form 3809-5, Change of Operator Liability, is attached with this letter for your convenience.

Please complete the attached Form 3809-5 and return to the BLM Utah State Office. Their address is:

Utah State Office  
Bureau of Land Management  
440 West 200 South, Suite 500  
Salt Lake City, Utah 84101-1345

Please respond within sixty (60) days. Please contact the BLM Fillmore Field Office (FFO) if you encounter difficulties with submission of the form in this time frame. The BLM will work with you to facilitate the completion of required documents in a timely manner. The form must be signed by both the current and successor operator.

Notice of Noncompliance – You signed a sale contract for the purchase of mineral materials from this site with the BLM on August 2, 2010. In that contract, you agreed to purchase 100 tons of mineral materials from this site at \$11.50 per ton, for a total purchase price of \$1,150.00. The contract duration for this non-competitive sale is five years, as required in 43 CFR §3602.34. The April 19, 2011 letter from Jill Silvey, referenced above, allowed you 30 days from the receipt of the letter to submit the outstanding balance to the BLM. To date, you have not paid for any of the mineral materials that you have previously removed.

Based on our inspections and materials in our files, your activity at the Drumbeat Mine has been unauthorized and is in violation of both State and Federal regulations. It is in violation of multiple provisions within the United States Code of Federal Regulations §3600 – Surface Management. Specifically, you are in violation of the following Federal regulations and have also committed these prohibited acts:

43 CFR §3601.52 – Unless the BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during operations. You have left multiple wooden pallets, ten concrete pallets, signposts, and a fork lift front on public lands at the site. The ‘permanent and temporary structures’ also include new roads, and any modifications or improvements to roads as a result of your use.

43 CFR §3601.71 – You have engaged in unauthorized use of the property of the United States because you may not extract, sever, or remove mineral materials from the public lands unless the removal is authorized by sale or permit. You signed an exclusive sale contract with the BLM on August 2, 2010, but to date you have not completed the requirements of that contract by the submission of the required payment. To remove materials without prior payment constitutes unauthorized use and is a trespass against the United States.



43 CFR §3602.24 – (a) You may not assign a mineral materials contract, or any interest therein, unless the BLM approves the transfer in writing. (b) Before the BLM may approve your assignment of a contract, your assignee must furnish a financial guarantee; provide a written commitment from the previous surety that it will be bound by the assignment if the BLM approves it; and demonstrate that the assignment meets all the terms and conditions in your mineral materials sale contract.

43 CFR §3602.26 – As specified in this regulation, you continue to be responsible for obligations, including reclamation obligations, that accrued before the assignment date of a contract, whether or not you knew of those responsibilities at the time of the contract transfer. Thus, even after a contract assignment and transfer, you retain responsibility for your actions at the operation prior to the transfer. You must remove your property items and complete reclamation of your surface disturbances at the Drumbeat Mine in order to be in compliance with this regulation.

43 CFR §3602.29(a) – You must submit at least one report per contract year of the amount of mineral materials you have mined or removed under your sales contract so BLM can verify that you have made the required payments. Production reports must be submitted annually, even if there is no production in a given year and the quantity reported as removed is zero. To date, you have not submitted any production reports, although the BLM has documented past production by you from this site.

You are hereby issued this Notice of Noncompliance due to your actions at the Drumbeat Mine location, BLM case file UTU-79875. For this Notice of Noncompliance to be lifted, you must address each of the violations above to the satisfaction of the BLM.

If you do not comply with this order, the BLM may take further action against you and/or the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce this order to prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts. Additionally, if you fail to adhere to the terms of this order, you may face arrest and trial under section 303(a) of the Federal Land Policy Management Act (43 U.S.C. 1733(a)). If convicted, you will be subject to a fine of not more than \$100,000 or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

Reclamation Required – If you prefer not to continue operations at this location or submit the change of operator form, then you are responsible for reclamation of the existing surface disturbances. If you choose not to file a Change of Operator Liability form, then within 60 days of issuance of this decision, you must commence reclamation activity required by the BLM. Industrial artifacts, such as fork lift parts, concrete pallets, and numerous wooden pallets, must be removed from the public lands. Surface disturbance areas such as access roads within the working location and the quarry area must be regraded to conform to the surrounding topography. Reshaped surfaces must be covered with a soil growth medium and the surfaces must be seeded with an appropriate seed mix. The seed mix will be provided by the BLM Fillmore Field Office upon request.



Unless a change of operator form is received, all initial reclamation of your previous surface disturbance activities, including required earthwork and reseeding, must be completed within 90 days of this decision or within 90 days of the initiation of activities after notification to the BLM of the reason for any delay. BLM resource specialists will continue to monitor your progress in meeting your reclamation obligations, including the success of the re-vegetation in the disturbed area. The BLM will inform you when all reclamation standards have been met and whether your obligations are complete.

If you decide not to file a Change of Operator Liability form and are unable to initiate reclamation activities due to weather or other factors, contact the BLM Fillmore Field Office to explain the reason for the delay. The BLM will work with you to prepare a schedule so that you may complete reclamation to BLM standards and avoid an outstanding bill.

Appeal of the Decision - If you do not agree and are adversely affected by this decision, in accordance with 43 CFR §3601.80, you may request that the BLM Utah State Director review this decision. If you request a State Director review, the request must be received in the BLM Utah State Office at:

Utah State Office  
Bureau of Land Management  
440 West 200 South, Suite 500  
Salt Lake City, Utah 84101-1345

The request must be received no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to the FFO. The request must be in accordance with the provisions provided in 43 CFR §3600. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision regarding your request for review of this decision within 21 days of the BLM's receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM Utah State Office to determine when the BLM receives the request for State Director Review. You have 30 days from the end of the 21 day period in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass a State Director review, this decision may be appealed directly to the IBLA in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the FFO at:

Fillmore Field Office  
Bureau of Land Management  
95 East 500 North,  
Fillmore, Utah 84631

Your notice of appeal must be filed within 30 days from the receipt of this decision. The appellant has the burden of proof showing that the decision appealed from is in error.



If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal.

A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the FFO. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

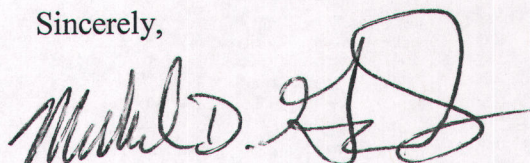
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied
2. The likelihood of the appellants success on the merits
3. The likelihood of immediate and irreparable harm in the stay is not granted
4. Whether the public interest favors granting the stay

If you have any questions or concerns please contact Duane Bays, Natural Resource Specialist, Fillmore Field Office, at (435) 743-3115.

Sincerely,



Michael D. Gates  
Field Office Manager

Enclosures:

Form 1842-1  
Form 3809-5  
Photos

cc: Donald R. Mayer  
6360 South 3000 East  
Suite 205  
Salt Lake City, UT 84121

Jones Landscaping Material  
P.O. Box 1435  
Riverton, UT 84065-1435



Jones Landscaping Material  
P.O. Box 95473  
South Jordan, UT 84099

Utah State Office  
Bureau of Land Management  
440 West 200 South, Suite 500  
Salt Lake City, Utah 84101-1345

Paul Baker  
UDOGM  
1594 W North Temple Ste 1210  
SLC, UT. 84114-5801